

## RESOLUTION 2023-10

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA, MAKING A DETERMINATION OF EXEMPTION UNDER CEQA GUIDELINES SECTION 15270 (PROJECTS WHICH ARE DISAPPROVED) AND RECOMMENDING THE CITY COUNCIL DENY DESIGN REVIEW 21-7016 FOR THE DEVELOPMENT OF A 93,435 SQUARE FOOT TWO-STORY WAREHOUSE FACILITY TOTALING 186,700 SQUARE FEET OF FLOOR AREA AND CONDITIONAL USE PERMIT 21-8025 FOR THE OPERATION OF A 22,000 SQUARE FOOT COMMERCIAL INDOOR CANNABIS CULTIVATION AND DISTRIBUTION FACILITY ON A 4.54-ACRE PARCEL LOCATED ON THE SOUTHEAST CORNER OF SOUTH JUAREZ STREET AND WESTWARD AVENUE WITHIN THE INDUSTRIAL ZONING DISTRICT**

**WHEREAS**, an application for Design Review 21-7016 to allow for the development of a 93,435 square foot two-story warehouse facility totaling 186,700 square feet of floor area and Conditional Use Permit 21-8025 for the operation of a 22,000 square foot commercial indoor cannabis cultivation and distribution facility on a 4.54-acre parcel within the Industrial Zoning District has been duly filed by:

Project Applicant: Premium Land Development  
Attn: Travis Heaps  
35109 Avenue C  
Yucaipa, CA 92399

Property Owner: Uberous, Inc.  
4195 Chino Hills Parkway  
Chino Hills, CA 91709

Project Location: Southeast corner of South Juarez Street and Westward Avenue, Banning, CA 92220

APN Information: 543-090-019; and

**WHEREAS**, the Planning Commission is authorized under Chapter 17.44 of the Banning Municipal Code ("BMC") to make a recommendation to the City Council regarding proposed Design Review 21-7016 and Conditional Use Permit 21-8025, for the development of a 93,435 square foot two-story warehouse facility totaling 186,700 square feet of floor area and the operation of a 22,000 square foot commercial indoor cannabis cultivation and distribution facility on a 4.54-acre parcel located in the Industrial (I) zoning district (the "Project"); and

**WHEREAS**, on March 24, 2023, the City gave public notice by advertising in the Record Gazette, a newspaper of general circulation within the City of Banning, and by mailing notices to property owners within 300-feet of the Project, of the holding of a public hearing at which the Project would be considered; and

**WHEREAS**, on April 5, 2023, the Planning Commission held the noticed public hearing at which time interested persons had an opportunity to testify in support of, or

opposition to, proposed Design Review 21-7016 and Conditional Use Permit 21-8025 and the meeting was continued to, May 3, 2023; and

**WHEREAS**, on May 3, 2023, the Planning Commission held the noticed public hearing at which time interested persons had an opportunity to testify in support of, or opposition to, proposed Design Review 21-7016 and Conditional Use Permit 21-8025 and the Planning Commission requested Staff to draft a Resolution for denial of the Project to bring back to the meeting of June 7, 2023; and

**WHEREAS**, on June 7, 2023, the Planning Commission recommended City Council denial of the Project.

**NOW THEREFORE**, the Planning Commission of the City of Banning does hereby find and determine as follows:

**SECTION 1: California Environmental Quality Act and Multiple Species Habitat Conservation Plan Findings.**

A. CEQA. Planning Division staff has determined that the Project is statutorily exempt from the requirements of the California Environmental Quality Act (“CEQA”) (Cal. Pub. Res. Code, § 21000 *et seq.*) and the State CEQA Guidelines (the “Guidelines”) (14 Cal. Code Regs. § 15000 *et seq.*). The Project qualifies under the Statutory exemption set forth in CEQA Guidelines Section 15270 because: (a) CEQA does not apply to projects which a public agency rejects or disapproves.

B. Multiple Species Habitat Conservation Plan (MSHCP). MSHCP does not apply to projects which are disapproved.

**SECTION 2: REQUIRED FINDINGS FOR DESIGN REVIEW 21-7016**

Section 17.56.050 of the City of Banning Zoning Ordinance requires that Design Review applications meet certain findings prior to the approval by the Planning Commission. The following findings are provided in support of denial of Design Review 21-7016:

**Finding A:** The proposed use is consistent with the General Plan.

**Finding of Fact:** Proposed Design Review 21-7016 is not consistent with the General Plan Land Use Element Policy, which states: “The land–use map shall provide for sufficient lands to provide a large range of products and services to the City and the region while carefully considering compatibility with adjacent residential lands.” Although the subject property is designated Industrial (I) on the General Plan land use map and the proposed use is consistent with that designation, the scale of the Project and the odors that would potentially emanate from the Project would be incompatible with the existing residential neighborhoods to the South and West.

**Finding B:** The proposed project is consistent with the Zoning Ordinance, including the development standards and guidelines for the district in which it is located.

**Finding of Fact:** The proposed Project is a 93,435 square foot two-story warehouse facility totaling 186,700 square feet of floor area is 48-feet-tall and is not consistent with the Zoning Ordinance and development standards for the following reasons. (a.) Banning Municipal Code (BMC) Section 17.12.101 A. 3. (Purpose of Commercial and Industrial Districts) to provide sufficient safeguards for the City's residents by providing buffers, clean industries. The Project does not provide a buffer and may potentially expel noxious odors. (b.) BMC Article III (Commercial and Industrial Development Design Guidelines), Section 17.12.090 B. 5. (General Design Principles, Undesirable Elements) Commercial and Industrial Building should not include "Boxlike" Structures. The proposed structure is boxlike. (c.) BMC Section 17.12.100 A. Projects should be developed to coordinate and complement existing development on adjacent sites. The project does not complement existing residential development to the west and south. (d.) BMC 17.12.150 A. (Architectural Design Guidelines) The height and scale of new development should always be compatible with adjacent existing development. New development may need to transition building height in order not to overpower existing development. The proposed structure's height of 48-feet is not compatible with adjacent residential structures which are less the 20-feet-tall and the proposed structure will overpower residential structures to the West and South.

**Finding C:** The design and layout of the proposed project will not unreasonably interfere with the use and enjoyment of neighboring existing or future development and will not result in vehicular and/or pedestrian hazards.

**Finding of Fact:** The design and layout of the proposed Project is not consistent with the development standards and design standards of the Banning Municipal Code. The proposed design and layout will create new interference with the use and enjoyment of existing neighboring residential development.

**Finding D:** The design of the proposed project is compatible with the character of the surrounding neighborhood.

**Finding of Fact:** The Project is a new construction development with a proposed 93,435 square foot two-story 48-foot-tall warehouse facility totaling 186,700 square feet of floor area, which will not be compatible with adjacent Residential zoned properties to the West and South.

**SECTION 3: Required Findings for Conditional Use Permit 21-8025:** The Planning Commission of the City of Banning does hereby find and determine that CUP 21-8025 should not be approved because:

**Finding A:** The proposed use is consistent with the General Plan;

**Finding of Fact:** Proposed Conditional Use Permit 21-8025 is not consistent with the General Plan Land Use Element Policy, which states: “The land–use map shall provide for sufficient lands to provide a large range of products and services to the City and the region while carefully considering compatibility with adjacent residential lands.” Although the subject property is designated Industrial (I) on the General Plan land use map and the proposed use is consistent with that designation, the scale of the Project and the odors that would potentially emanate from the Project would be incompatible with the existing residential neighborhoods to the South and West.

**Finding B:** The proposed use is conditionally permitted within the subject land use district and complies with all the applicable provisions of Title 17 of the Banning Municipal Code;

**Finding of Fact:** Table 17.12.020 (“Permitted, Conditional and Prohibited Commercial and Industrial Uses”) of Section 17.12.020 of Chapter 17.12 of Title 17 of the Banning Municipal Code provides that “Cannabis Cultivation and Distribution”, is a conditionally permitted use in the Industrial (I) zoning district. However, the proposed Project is a 93,435 square foot two-story warehouse facility totaling 186,700 square feet of floor area is 48-feet-tall and is not consistent with the Zoning Ordinance and development standards for the following reasons. (a.) Banning Municipal Code (BMC) Section 17.12.101 A. 3. (Purpose of Commercial and Industrial Districts) to provide sufficient safeguards for the City’s residents by providing buffers, clean industries. The Project does not provide a buffer and may potentially expel noxious odors. (b.) BMC Article III (Commercial and Industrial Development Design Guidelines, Section 17.12.090 B. 5. (General Design Principles, Undesirable Elements) Commercial and Industrial Building should not include “Boxlike” Structures. The proposed structure is boxlike. (c.) BMC Section 17.12.100 A. Projects should be developed to coordinate and complement existing development on adjacent sites. The project does not complement existing residential development to the west and south. (d.) BMC 17.12.150 A. (Architectural Design Guidelines) The height and scale of new development should always be compatible with adjacent existing development. New development may need to transition building height in order not to overpower existing development. The proposed structure’s height of 48-feet is not compatible with adjacent residential structures which are less the 20-feet-tall and the proposed structure will overpower residential structures to the West and South.

**Finding C:** The proposed use would not impair the integrity and character of the land use district in which it is to be located;

**Finding of Fact:** The proposed use would be located on Charles Street, which is an industrially zoned street within the City, and it was anticipated that the area would contain Industrial Cannabis businesses currently permitted within the City under the BMC. However, the proposed use may impair the integrity of the adjacent residential land use due to the potential of noxious odors emanating from the facility.

**Finding D:** The subject site is physically suitable for the type and intensity of land use being proposed;

**Finding of Fact:** The subject site is currently vacant, and the applicant is proposing development of a 22,000 square foot facility for cannabis cultivation and distribution. The site will have adequate parking, landscaping, lighting, and security. However, the site is adjacent to existing residential development and is not suitable in the existing neighborhood.

**Finding E:** There are adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety;

**Finding of Fact:** The subject site is served by public and private utilities, including the City's water, sewer, and electrical utilities. The subject site has access and is served from Charles Street, which is an existing developed roadway with existing utilities. However, the potential for noxious odors may be detrimental to public health and safety.

**Finding F:** There will not be significant harmful effects upon environmental quality; natural resources; or neighborhood characteristics;

**Finding of Fact:** The proposed use may have harmful effects on the existing, adjacent residential land use due to the potential of noxious odors emanating from the facility and is not compatible with existing residential neighborhood characteristics.

**Finding G:** The proposed location, size, design, and operating characteristics of the proposed use will not be detrimental to the public interests, health, safety, convenience, or welfare of the City.

**Finding of Fact:** The proposed location, design, and operating characteristics of the proposed cannabis cultivator and distributor will be detrimental to the public interests, health, safety, convenience, or welfare of the City. The proposed 48-foot-tall structure will be located close to existing residential development and potential noxious odors may be detrimental to health and safety and welfare of the City.

**SECTION 4: PLANNING COMMISSION ACTION:**

Based on the foregoing, the Planning Commission of the City of Banning hereby recommends the City Council deny Design Review 21-7016 and Conditional Use Permit 21-8025, for the reasons stated above

**PASSED, APPROVED, AND ADOPTED this 7<sup>th</sup> day of June 2023.**

---

Richard Krick, Chairman  
Banning Planning Commission

APPROVED AS TO FORM

---

Steven L. Flower, Assistant City Attorney  
Richards, Watson & Gershon

ATTEST:

---

Sandra Calderon, Recording Secretary  
City of Banning, California

**CERTIFICATION:**

I, Sandra Calderon, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution 2023-10, was duly adopted by the Planning Commission of the City of Banning, California, at a regular meeting thereof held on the 7<sup>th</sup> day of June 2023, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Sandra Calderon, Recording Secretary  
City of Banning, California